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RECEIVED

DEC 18 1991

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5 Attorney for Defendant/Cross-Complainant
Gerald Armstrong
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HUB LAW OFFICES

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10
11 CHURCH OF SCIENTOLOGY OF)
CALIFORNIA)

CASE NO. C 420153

12 Plaintiff,)

SUPPLEMENTAL OPPOSITION OF
GERALD ARMSTRONG TO MOTION TO
ENFORCE SETTLEMENT AGREEMENT;
DECLARATION OF TOBY L. PLEVIN

13 vs.)

14 GERALD ARMSTRONG)

[LACK OF JURISDICTION TO
ENTERTAIN THIS MOTION]

15 Defendant.)

Date: December 23, 1991
Time: 9:00 a.m.
Dept: 56

16
17 _____)
18 MARY SUE HUBBARD)

Discovery: None
Motion: None
Trial: None

19 Intervenor.)
20 _____)

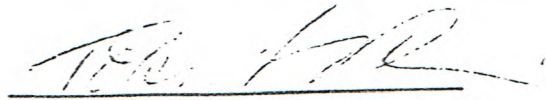
21 TO THE COURT AND ALL COUNSEL OF RECORD:

22 PLEASE TAKE NOTICE THAT GERALD ARMSTRONG REQUESTS THAT THE COURT
23 accept and consider this Supplemental Opposition to the Motion to
24 Enforce Settlement Agreement on the ground that the court does
25 not have subject matter jurisdiction to enforce the settlement
26 under C.C.P. Section 127.4 as maintained by the moving parties
27 because the court did not adopt the Mutual Release and Settlement
28 Agreement as an order of the court. Furthermore, the court does

1 not have jurisdiction over the person of Gerald Armstrong.

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3 Date: December 16, 1991



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Toby L. Plevin,
Attorney for Gerald Armstrong

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

In preparing the opposition to the enforcement motion, counsel for Mr. Armstrong did not address the fundamental question of whether the court has jurisdiction for such enforcement of settlement agreements. However, the claimed jurisdictional basis for enforcing the Settlement Agreement on which the moving parties rely does not exist. The court has no jurisdiction over Gerald Armstrong at all at this time.

In the moving papers, the Church of Scientology deals with the jurisdictional issue perfunctorily, in one sentence. The brief states:

"Not only did the parties agree that this Court would retain jurisdiction to enforce the terms of the settlement agreement [Ex. A, para.20] but this Court has the inherent power as well to compel obedience to its judgments and oversee and enforce execution of its decrees." C.C.P. 128(4); Brown v. Brown (1972) 22 Ca. App. 3d 82, 84, 99 Cal. Rptr 311, 312.

While this suggests that the Mutual Release and Settlement Agreement ("Settlement Agreement") was adopted as an order of the court, the record of this action is to the contrary. Indeed, not only was the Settlement Agreement not adopted as an order of the court, the Settlement Agreement was never even filed with the court!

Turning to the effect of the parties' agreement that the court retain the power to enforce the settlement, that "grant" of jurisdiction is not effective: litigants do not have the power to confer jurisdiction upon the courts.

1 I. THE SETTLEMENT AGREEMENT IS NOT AN
2 ORDER OF THE COURT AND THEREFORE IS NOT
3 ENFORCEABLE UNDER C.C.P. 127(a)(4).¹

4 C.C.P. 127(a)(4) provides:

5 "Every court shall have the power to do all
6 of the following:

7 (4) To compel obedience to its judgments,
8 orders and process, and to the orders of a
9 judge out of court in an action or
10 proceeding pending therein."

11 Notably, the section does not confer power upon the court to
12 enforce the settlement agreements of the parties before it. Thus,
13 in order to determine whether there is any merit to the
14 contention that this section gives the court power to enforce the
15 Settlement Agreement, we must determine whether the terms of the
16 Settlement Agreement were made part of any "judgment, order (or)
17 process" of the court.

18 In this connection the moving parties rely on the "Order
19 Dismissing Action with Prejudice", Exhibit Q to the Moving
20 Papers. This order states, in its entirety:

21 "Upon consideration of the parties'
22 Stipulation for Dismissal, the "Mutual
23 Release of All Claims and Settlement
24 Agreement" and the entire record herein, it
25 is

26 ORDERED AND ADJUDGED:

27 1. That this action is dismissed
28 with prejudice.

2. That an executed duplicate
original of the parties' "Mutual
Release of All Claims and

26 ¹The citation to C.C.P. 127(4) must be a typographical
27 error. There is no such section. It would appear that the
28 church parties intended to cite to 127(a)(4) which is the
section dealing with the court's inherent power to enforce its
decrees.

1 Settlement Agreement" filed herein
2 under seal shall be retained by the
3 Clerk of this Court under seal."

4 Dated: December 11, 1986

5 Hon. Paul G. Breckenridge

6 The only order of the court in the above quoted order
7 respecting the Mutual Release and Settlement Agreement was that
8 it be filed; the Order Dismissing Action did not adopt the
9 Settlement Agreement as an order, judgment or process of the
10 court. Thus, section 127(a)(4) is not applicable and does not
11 confer power upon this court to enforce the Settlement Agreement.

12 In fact, as this court may recall, the proceedings initiated
13 in 1988 by Bent Corydon for the unsealing of the court files of
14 this action brought to light the fact that the Settlement
15 Agreement was not part of the official records of this proceeding
16 and that it had never been filed. Specifically, after being
17 given access to the court file, Corydon's counsel discovered the
18 above referenced Order Dismissing Action but also noted that the
19 document had not been not filed or recorded in the Register of
20 Actions. On the other hand, the file did contain two minute
21 orders which confirmed that the Settlement Agreement had not been
22 filed. Declaration of Toby L. Plevin para 2. Thereafter, in
23 February 1989 Corydon filed a motion with this court requesting
24 that the Church of Scientology parties be ordered to file the
25 document. In response, those parties--who today are seeking to
26 enforce that Settlement Agreement as if it were the judgement or
27 order of the court--admitted that it had not been filed in spite
28 of the representation to the court to the contrary. See Brief in

1 Opposition to Motion of Bent Corydon for an Order Directing the
2 Parties to File an Executed Duplicate Original of the Mutual
3 Release and Settlement Agreement, dated February 13, 1989.
4 Furthermore, they opposed the motion claiming, inter alia, that
5 the parties to a settlement agreement are not required to file
6 the agreement with the court. This court agreed with that
7 contention and denied the motion at the hearing thereon on
8 February 21, 1989.

9 The Order Dismissing Action, quoted in full above, does not
10 reserve any jurisdiction or adopt any of the terms of the
11 Settlement Agreement expressly or by incorporation; it merely
12 ordered that the Settlement Agreement be filed, an order which
13 the moving parties apparently felt free to ignore. Thus, we are
14 confronted with the following irony: In 1989 the Church of
15 Scientology parties contended that they were not required to file
16 the Settlement Agreement and that there was no reason for it to
17 be part of the file yet now they argue that that same document
18 has the force and effect of a court order or judgment! However,
19 since the Mutual Release and Settlement Agreement was never made
20 an order of the court, C.C.P. 127(a)(4) is not effective to give
21 the court power to enforce it.²

22
23 ²Armstrong notes that, but for the fortuitous
24 circumstance that his present counsel, Toby L. Plevin,
25 had the opportunity to inspect the file, the fact that
26 the moving parties' claim that the Mutual Release and
27 Settlement Agreement was an order of the court is not
28 true would not have been known. Nor would counsel have
known that it was not even filed. It is again obvious
that the church parties have used the sealing of this
file not to protect a valid interest, a fact recognized
by the Court of Appeal in its recent ruling, but have
instead used it to attempt to perpetrate a fraud upon
Gerald Armstrong, because he has no access to the sealed


1 seen, there was no express reservation of power in this instance.
2 Accordingly, we must next determine whether all proceedings in
3 this action are now concluded, ie. whether there is any basis for
4 continuing jurisdiction in this court over Gerald Armstrong.

5 The original complaint in this action was the complaint of
6 the Church of Scientology of California against Gerald Armstrong.
7 Subsequently, Mr. Armstrong filed a cross-complaint. The
8 complaint and cross-complaint were bifurcated and the trial in
9 1984 was a trial only of those matters raised in the complaint.
10 Although the Church of Scientology parties immediately appealed
11 Judge Breckenridge's ruling in favor of Mr. Armstrong, the appeal
12 thereon was dismissed as premature given that the cross-complaint
13 was still pending. Declaration of Toby L. Plevin, para. 4. The
14 Order Dismissing Action on which the moving parties rely
15 dismissed only the cross-complaint of Gerald Armstrong thus
16 terminating the proceedings in that action. Accordingly, there
17 is no basis for jurisdiction over Mr. Armstrong on the basis of
18 the cross-complaint or the Settlement Agreement.

19 Turning then to the proceedings on the complaint: after the
20 execution of the order that dismissed the cross-complaint, the
21 Church of Scientology refiled its appeal of Judge Breckenridge's
22 decision. That decision was affirmed by the Second District
23 Court of Appeals on July 29, 1991. Thereafter, the Scientology
24 parties filed a petition for certiorari to the California Supreme
25 Court. However, that petition was denied on October 17, 1991.
26 See Exhibit A hereto. Thus Judge Breckenridge's decision is now
27 final for all purposes and there is no longer any jurisdiction
28 over Mr. Armstrong in this action.

1 Since the court does not have personal jurisdiction over Mr.
2 Armstrong and since it does not have power to enforce the
3 Settlement Agreement as an order of the court under C.C.P.
4 127(a)(4), this court can not hear this motion or enforce the
5 terms of the agreement.

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7 Dated: December 16, 1991



Toby L. Plevin
Attorney for Gerald Armstrong

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DECLARATION OF TOBY L. PLEVIN

I, Toby L. Plevin, declare as follows:

1. I am attorney of record for Gerald Armstrong in the case captioned Church of Scientology of California et. al. v. Gerald Armstrong L.A.S.C. Case No. 420153.

2. In November 1988 I represented Bent Corydon in a motion to unseal the court file in this case. Mr. Corydon and I, along with other counsel then representing Mr. Corydon, were given access to the file by this court's order. As a result of that access I reviewed the file in some detail.

3. Among other things I noted about the file, I observed that, although the Order Dismissing Action recited that the Mutual Release and Settlement Agreement between Mr. Armstrong and the Scientology organization was to have been filed on or about December 11, 1991, it had not been filed at all. There were two minute orders of the court which also stated that the document had not been filed. As a result, in February 1989, I filed a motion for an order directing that the Scientology organization file the document. Their opposition to that motion is attached hereto as Exhibit A.

4. I have reviewed the file in this matter extensively and am familiar with the proceedings therein. The original complaint in this action was the complaint of the Church of Scientology of California against Gerald Armstrong. Subsequently, Mr. Armstrong filed a cross-complaint. The complaint and cross-complaint were bifurcated and the trial in 1984 was a trial only of those matters raised in the complaint. Although the Church of Scientology parties immediately appealed Judge Breckenridge's

1 ruling in favor of Mr. Armstrong, the appeal thereon was
2 dismissed as premature given that the cross-complaint was still
3 pending. On July 29, 1991, the Second District Court of Appeal
4 affirmed Judge Breckenridge's decision in favor of Mr. Armstrong.

5 5. Attached hereto as Exhibit A is a true copy of the
6 decision of the California Supreme Court denying the petition for
7 certiorari filed by the Church of Scientology parties in this
8 action.

9 I swear under penalty of perjury under the laws of the State
10 of California that the foregoing is true, this 16th day of
11 December 1991.



Toby L. Plevin

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10-21-91

Second Appellate District, Division Three, No. B025920/B038975
S022840

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

CHURCH OF SCIENTOLOGY OF CALIFORNIA, Appellant

v.

GERALD ARMSTRONG, Respondent

And Companion Case

SUPREME COURT
FILED

OCT 17 1991

Robert Wandruif Clark

DEPUTY

Petition for review DENIED.

LUCAS

Chief Justice

